

**CRIMINAL PROCEDURE (AMENDMENT) ORDINANCE 2004**

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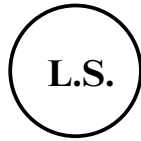
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**HONG KONG SPECIAL ADMINISTRATIVE REGION**

ORDINANCE No. 22 OF 2004



TUNG Chee-hwa  
Chief Executive  
15 July 2004

An Ordinance to amend the Criminal Procedure Ordinance to introduce a revised scheme applicable to prisoners who have been serving certain sentences (being discretionary life sentences, mandatory life sentences served in respect of the conviction of murder committed under 18 years of age, or detention at Executive discretion, within the meaning of the Long-term Prison Sentences Review Ordinance) since the commencement of, or any time before the commencement of, the provisions which previously provided for the determination of the minimum terms to be served by such prisoners, and to provide for related matters.

[16 July 2004]

Enacted by the Legislative Council.

**1. Short title**

This Ordinance may be cited as the Criminal Procedure (Amendment) Ordinance 2004.

**2. Sections substituted**

Sections 67C to 67E of the Criminal Procedure Ordinance (Cap. 221) are repealed and the following substituted—

**“67C. Determinations in respect of certain existing prisoners**

(1) As soon as practicable after the commencement of this section and in any event within 6 months after such commencement, the Secretary for Justice must, in respect of each prescribed prisoner, apply to the court for a determination by a judge under this section.

(2) If, within 6 months after the commencement of this section, the Secretary for Justice does not make any application in respect of any prescribed prisoner under subsection (1), the prescribed prisoner may also apply to the court for a determination by a judge under this section.

(3) Subject to subsection (4), the judge hearing an application under subsection (1) or (2) must determine the minimum term that the prescribed prisoner must serve for the relevant offence.

(4) Where the prescribed prisoner is serving the relevant sentence in respect of the conviction of murder committed when he was under 18 years of age, then, subject to the consent of the prescribed prisoner to the application of this subsection to him, the judge has the discretion as to whether—

- (a) to make a determination under subsection (3); or
- (b) to determine instead that the relevant sentence be quashed, and be substituted by a sentence of imprisonment for a fixed term of such duration as the judge considers appropriate.

(5) In making a determination under this section—

- (a) subject to paragraph (b), the judge may take into account any material submitted to him by the Secretary for Justice or the prescribed prisoner that is, in his opinion, relevant to the determination; and
- (b) the judge must not take into account the previous recommendation or the previous determination.

(6) Notwithstanding subsections (3) and (5), if the term determined under subsection (3) (whether or not also by application of subsection (4)(a)) as the minimum term that the prescribed prisoner must serve for the relevant offence is longer than the term specified as the minimum term to be served by the prescribed prisoner for the relevant offence under the previous recommendation, the term so determined is, for all purposes, to be treated as equal to the term so specified.

(7) If, when making a determination under subsection (3) (whether or not also by application of subsection (4)(a)), the judge is of the opinion that there are any special considerations or circumstances relating to the prescribed prisoner or the relevant offence which should be taken into account in any future review of the relevant sentence, the judge must make a report in writing to the Chief Executive specifying details of those special considerations or circumstances.

**67D. Further provisions relating to applications under section 67C and related procedural matters**

(1) An application by the Secretary for Justice or a prescribed prisoner under section 67C(1) or (2) is to be—

(a) in writing; and

(b) signed—

(i) in the case of an application under section 67C(1), by the Secretary for Justice or any person holding one of the offices in the Department of Justice mentioned in Schedule 1 to the Legal Officers Ordinance (Cap. 87); or

(ii) in the case of an application under section 67C(2), by the prescribed prisoner.

(2) No charge is to be payable for any application under section 67C(1) or (2).

(3) As soon as practicable after the Secretary for Justice has made an application in respect of a prescribed prisoner under section 67C(1), the Secretary for Justice must serve a copy of the application on the prescribed prisoner.

(4) For the purposes of an application in respect of a prescribed prisoner under section 67C(1) or (2), the Registrar must, as soon as practicable after a request in writing has been made to him by the Secretary for Justice or the prescribed prisoner, as the case may be, as the person by whom the application is to be made, deliver to the Secretary for Justice or the prescribed prisoner, as the case may be—

(a) a copy of the record, if available, of the proceedings relating to the relevant sentence; and

(b) a copy of any report concerning the prescribed prisoner which was before the court which passed the relevant sentence.

(5) Where an application has been made in respect of a prescribed prisoner under section 67C(1) or (2), the Secretary for Justice or the prescribed prisoner may apply to a judge for—

- (a) a copy of the record, if available, of the proceedings concerning the prescribed prisoner (whether relating to the relevant offence or the relevant sentence) or any part or parts of the record; and
  - (b) a copy of any document in the possession of the Registrar, and if the judge is satisfied that it is necessary and practicable to do so, the judge must direct the Registrar to deliver the copy to both the Secretary for Justice and the prescribed prisoner.
- (6) Without prejudice to section 123, all proceedings conducted before a judge for the purposes of an application under section 67C(1) or (2) (other than any proceedings conducted before a judge for the purposes of an application under subsection (5)) must be held in open court.

**67E. Sections 67C and 67D no longer to apply  
if prescribed prisoners cease to serve  
relevant sentence**

Where a prescribed prisoner ceases to serve the relevant sentence at any time after the commencement of section 67C but before any determination is made in respect of the prescribed prisoner under that section—

- (a) sections 67C and 67D then cease to apply to the prescribed prisoner; and
- (b) without limiting the generality of paragraph (a), any proceedings relating to the prescribed prisoner under section 67C and any appeal or other proceedings arising from or preliminary or incidental to such proceedings are, to the extent that they have not been completed, then to be treated as having been discontinued.

**67F. Effect of section 67C determinations  
on previous orders under section  
15(1)(b) of Long-term Prison  
Sentences Review Ordinance**

(1) Where, before any determination is made under section 67C(3) (whether or not also by application of section 67C(4)(a)) in respect of a prescribed prisoner, any order has been made under section 15(1)(b) of the Long-term Prison Sentences Review Ordinance (Cap. 524) in respect of the prescribed prisoner (whether or not any such order has been renewed under section 15(4) of that Ordinance)—

- (a) the determination does not affect the validity or effect of the order or the order as renewed from time to time under section 15(4) of that Ordinance; and
- (b) sections 12(2) and 15(3) of that Ordinance are, for all purposes, not to be regarded as having application to and in relation to the order or the order as renewed from time to time under section 15(4) of that Ordinance.

(2) Where, before any determination is made under section 67C(4)(b) in respect of a prescribed prisoner, any order has been made under section 15(1)(b) of the Long-term Prison Sentences Review Ordinance (Cap. 524) in respect of the prescribed prisoner (whether or not any such order has been renewed under section 15(4) of that Ordinance), upon the making of the determination—

- (a) without prejudice to section 27 of that Ordinance, the order ceases to have effect; and
- (b) for the purpose of requiring the prescribed prisoner to serve the remainder (if any) of the sentence of imprisonment by which the relevant sentence is substituted under the determination—
  - (i) the Commissioner of Correctional Services must recall the prescribed prisoner to prison; and
  - (ii) section 26 of that Ordinance applies to and in relation to the prescribed prisoner as it applies to and in relation to a prisoner referred to in subsection (1) of that section.

### **67G. Interpretation**

(1) In sections 67B, 67C, 67D, 67E and 67F and this section—  
“discretionary life sentence” (酌情性終身監禁刑罰) has the same meaning as in the Long-term Prison Sentences Review Ordinance (Cap. 524);  
“Executive discretion” (行政酌情決定) has the same meaning as in the Long-term Prison Sentences Review Ordinance (Cap. 524);  
“mandatory life sentence” (強制性終身監禁刑罰) has the same meaning as in the Long-term Prison Sentences Review Ordinance (Cap. 524);  
“prescribed prisoner” (訂明囚犯) means any prisoner—

- (a) to whom any of the relevant provisions applied at their commencement; and
- (b) who at all times between such commencement and the commencement of section 67C has been, and at the commencement of section 67C is still—
  - (i) serving a discretionary life sentence in respect of the conviction of any offence;

(ii) serving a mandatory life sentence in respect of the conviction of murder committed when the prisoner was under 18 years of age; or

(iii) detained at Executive discretion in respect of the conviction of any offence;

“previous determination” (原先裁定), in relation to a prescribed prisoner, means the determination of the Chief Executive specifying the minimum term to be served by the prescribed prisoner for the relevant offence and notified to the prescribed prisoner by letter dated 2 April 1998, 9 April 1998, 30 April 1998, 11 June 1998 or 16 July 1999, as the case may be;

“previous recommendation” (原先建議), in relation to a prescribed prisoner, means the recommendation of the Chief Justice to the Chief Executive specifying the minimum term to be served by the prescribed prisoner for the relevant offence and dated 15 December 1997, 28 August 1998 or 9 April 1999, as the case may be;

“relevant offence” (有關罪行), in relation to a prescribed prisoner, means—

(a) where the prescribed prisoner is within the description of paragraph (b)(i) of the definition of “prescribed prisoner”, the offence described in that paragraph;

(b) where the prescribed prisoner is within the description of paragraph (b)(ii) of the definition of “prescribed prisoner”, the offence of murder described in that paragraph; or

(c) where the prescribed prisoner is within the description of paragraph (b)(iii) of the definition of “prescribed prisoner”, the offence described in that paragraph;

“relevant provisions” (有關條文) means—

(a) section 67C as originally enacted by the Long-term Prison Sentences Review Ordinance (Cap. 524); and

(b) section 67D as originally enacted by the Criminal Procedure (Amendment) Ordinance 1998 (6 of 1998);

“relevant sentence” (有關刑罰), in relation to a prescribed prisoner, means—

(a) where the prescribed prisoner is within the description of paragraph (b)(i) of the definition of “prescribed prisoner”, the discretionary life sentence described in that paragraph;

(b) where the prescribed prisoner is within the description of paragraph (b)(ii) of the definition of “prescribed prisoner”, the mandatory life sentence described in that paragraph; or

(c) where the prescribed prisoner is within the description of paragraph (b)(iii) of the definition of “prescribed prisoner”,

the detention at Executive discretion described in that paragraph.

(2) In sections 67C and 67D, any reference to judge is a reference to a judge of the court, a recorder of the court or a deputy judge of the court.”.

## **Consequential Amendments**

### **Legal Aid in Criminal Cases Rules**

#### **3. Interpretation**

Rule 2 of the Legal Aid in Criminal Cases Rules (Cap. 221 sub. leg. D) is amended by adding—

“(3) In these rules, in any case to which rule 4(1)(ca) applies—

(a) the prescribed prisoner referred to in that rule shall be regarded as included in any reference to accused person or accused persons or to appellant or appellants, as the case may be; and

(b) the provisions of these rules shall apply to such case with such modifications as the circumstances require, and, without limiting the generality of the foregoing—

(i) rule 9(a) shall be read as if the reference to “convicted” were a reference to the subject of a determination under section 67C of the Ordinance, and the reference to “his conviction or sentence or both” were a reference to such determination under that section;

(ii) rule 10(a) shall be read as if it referred also to the certificate of solicitor or counsel assigned to represent the prescribed prisoner in question in the proceedings instituted under section 67C of the Ordinance as given under rule 9(a) (as read in accordance with sub-subparagraph (i)); and

(iii) rule 21(1)(a) and (d), (2), (4)(a) and (5) shall be read as if any reference to “the trial”, “a trial” or “any trial” were a reference to the proceedings instituted under section 67C of the Ordinance, and the reference to “tried together” were a reference to the subjects of such proceedings instituted under that section that are conducted together.”.

#### **4. Legal aid for accused persons and appellants**

Rule 4(1) is amended by adding—



“(ca) a prescribed prisoner within the meaning of section 67C of the Ordinance may be granted legal aid under these rules for the purposes of any proceedings instituted under that section and any appeal or other proceedings arising therefrom or preliminary or incidental thereto;”.

### **Post-Release Supervision of Prisoners Ordinance**

#### **5. Application**

Section 3(2) of the Post-Release Supervision of Prisoners Ordinance (Cap. 475) is amended by adding “by the Chief Executive” after “converted”.

### **Long-term Prison Sentences Review Ordinance**

#### **6. Interpretation**

Section 4(1) of the Long-term Prison Sentences Review Ordinance (Cap. 524) is amended, in the definition of “minimum term”, by repealing “, 67C or 67D” and substituting “or 67C”.

#### **7. Duty of Commissioner to refer cases of prisoners to Board for review**

Section 11(9) is amended by adding “by the Chief Executive” after “converted”.

#### **8. Board may request reports**

Section 14(1)(c)(ii) is amended by adding “or 67C” after “67B”.

#### **9. Board may make recommendations relating to prisoners and orders for their release**

Section 15 is amended—

- (a) in subsection (1)(b) and (c), by adding “by the Chief Executive” after “converted”;

(b) in subsection (3), by repealing “, 67C or 67D” and substituting “or 67C”.

**10. Recall of prisoner to serve remainder of sentence on expiry of conditional release order**

Section 25(3) is amended by adding “by the Chief Executive” after “converted”.